

STATE OF MICHIGAN

THE THIRD JUDICIAL CIRCUIT COURT - (WAYNE COUNTY)

PEOPLE OF THE STATE OF MICHIGAN

VS.

CIRCUIT COURT NO.
09-25646-01

ERIC ARLINGTON OGILVIE,

DEFENDANT.

MOTION/SENTENCE

BEFORE THE HONORABLE PATRICIA S. FRESARD, CIRCUIT JUDGE

DETROIT, MICHIGAN - APRIL 16, 2010

APPEARANCES:

FOR THE PEOPLE: SITA DODDAMANI, P-67459
ASSISTANT PROSECUTING ATTORNEY
1441 ST. ANTOINE
DETROIT, MICHIGAN 48226
(313) 224-5777

FOR DEFENDANT: JOHN FREEMAN, P-71450
ATTORNEY-AT-LAW
100 W. BIG BEAVER, SUITE 200
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REPORTED BY: M. ARLEN DREGER, CSR-2509
OFFICIAL COURT REPORTER
(313) 224-2455

C O N T E N T S

1			
2	WITNESSES:	PEOPLE	
3	NONE		
4			
5			
6	WITNESSES:	DEFENDANT	
7	NONE		
8			
9			
10	EXHIBITS:	MARKED	RCVD
11	NONE		
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1 DETROIT, MICHIGAN

2 APRIL 16, 2010 9:52 A.M.

3 - - -

4 THE CLERK: THIS IS DOCKET NUMBER 09-25646,
5 PEOPLE VERSUS ERIC OGILVIE, HERE FOR MOTION HEARING.

6 MS. DODDAMANI: GOOD MORNING. SITA DODDAMANI
7 FOR THE PEOPLE.

8 MR. FREEMAN: GOOD MORNING. JOHN FREEMAN ON
9 BEHALF OF MR. OGILVIE, WHO IS SEATED AT COUNSEL'S
10 TABLE.

11 MS. DODDAMANI: JUDGE, YOU WERE KIND ENOUGH
12 TO GIVE ME SOME TIME TO RESPOND TO THE MOTION FOR NEW
13 TRIAL AND GET THE TRANSCRIPT, AND I DID DO THAT.

14 THE COURT: ALL RIGHT.

15 I READ THE MOTION. I READ THE TRANSCRIPT.

16 IS THERE ANYTHING YOU WANTED TO ADD OR
17 ANYTHING?

18 MR. FREEMAN: YES, YOUR HONOR. THANK YOU.

19 SHOULD I STAND AT THE LECTURN?

20 THE COURT: IF YOU WANT TO.

21 MR. FREEMAN: JUDGE, FOR THE PURPOSES OF THE
22 RECORD, THE COURT SHOULD BE AWARE THAT I DO HAVE A
23 WITNESS AVAILABLE IN REFERENCE TO THE PORTION OF THE
24 MOTION THAT TALKS ABOUT INEFFECTIVE ASSISTANCE OF
25 COUNSEL. I HAVE SUBPOENAED AND I UNDERSTAND HE IS IN

1 THE BUILDING, THE FORMER ATTORNEY ON THIS MATTER, WHO I
2 WOULD BE PREPARED TO PUT ON THE WITNESS STAND TO BACK
3 UP THE FACTUAL ASSERTIONS THAT ARE CONTAINED IN THE
4 OFFER OF PROOF THAT WAS FILED ALONG WITH THE MOTION
5 ITSELF.

6 JUDGE, THERE ARE AN AWFUL LOT OF ISSUES THAT
7 HAVE BEEN RAISED IN THIS MOTION. I AM HAPPY TO GO
8 THROUGH THAT THEM INASMUCH DETAIL AS THE COURT WANTS.

9 THE COURT: I THINK YOU NEED TO GO THROUGH
10 THEM ONE AT TIME, FOR ONE THING, AND ALLOW A RESPONSE
11 AND DECISION ON EACH ISSUE.

12 SO YOU CAN START.

13 MR. FREEMAN: THANK YOU, YOUR HONOR.

14 MANY OF THE GROUPS -- WELL, LET ME JUST START
15 BY SAYING THAT THE FOUNDATION HERE IS THAT YOU HAVE THE
16 DISCRETION TO GRANT THIS MOTION TODAY, AND THAT IS, IN
17 FACT, WHAT WE ARE ASKING YOU TO DO.

18 TURNING TO PAGE 5 OF THE MOTION, IT IS OUR
19 POSITION, YOUR HONOR, THAT BECAUSE THE COLLECTIVE
20 INEFFECTIVE ASSISTANCE IN THIS CASE PERMITS THE
21 ON-GOING OWNERSHIP, MULTIPLE OWNERSHIP -- MULTIPLE
22 OWNERSHIP OF FIREARMS, LAWFUL CARRYING OF CONCEALED
23 WEAPON PISTOL AS EVIDENCE OF A PROPENSITY FOR VIOLENCE.

24 AS A MATTER OF LAW, THERE SHOULD NOT HAVE
25 BEEN THAT NEGATIVE INFERENCE. THE JURY SHOULD NOT HAVE

1 HEARD THAT INFORMATION, AND BEEN ABLE TO DRAW NEGATIVE
2 INFERENCE FROM IT. THIS IS LAID OUT IN GREAT DETAIL AT
3 PAGES 5 AND 6 OF THE MOTION.

4 DID YOU WANT TO ME TO STOP AT THAT ISSUE,
5 EACH ISSUE, ALLOW FOR A RESPONSE FROM THE PROSECUTOR?

6 THE COURT: YES.

7 MR. FREEMAN: OKAY.

8 MS. DODDAMANI: JUDGE, MOST OF WHAT MY
9 ARGUMENT IS IS CONTAINED IN THE BRIEF; MY RESPONSIVE
10 BRIEF THAT I FILED.

11 HIS RIGHT TO POSSESS FIREARMS WAS NOT ANY
12 QUESTION IN THIS CASE; JUST THE MERE FACT OF BRINGING
13 UP HIS LEGAL POSSESSION OF THOSE THINGS WAS NEVER
14 BROUGHT UP IN A MANNER THAT MADE HIM APPEAR VIOLENT, OR
15 WRONG, OR EVER COMMENTED ON.

16 HIS LEGAL POSSESSION OF THOSE THINGS WAS
17 ACTUALLY MADE LIGHT OF, AND THE FACT THAT THIS TRIAL
18 WAS NOT ACTUALLY ABOUT HIS OWNERSHIP OF MULTIPLE GUNS
19 OR HIS OWNERSHIP IN THE HOUSE WITH THE MULTIPLE GUNS,
20 OR HIS RIGHT TO CARRY A GUN. IN FACT, IT WAS QUOTED
21 FROM THE TRANSCRIPT IN OPENING STATEMENT ABOUT HOW -- I
22 SAID, THIS CASE IS NOT ABOUT ACTUAL POSSESSION OF THE
23 GUN, BECAUSE HE HAD A CCW PERMIT, AND HE LEGALLY COULD
24 CARRY THAT WEAPON. AND THEN I WENT ON TO TALK ABOUT
25 WHAT THIS CASE WAS REALLY ABOUT.

1 SO I DON'T BELIEVE, EVEN IF THOSE THINGS WERE
2 MENTIONED, NOTHING, ANYTHING, NOTHING WAS NEGATIVE
3 DRAWN FROM THAT.

4 MR. FREEMAN: JUDGE, IF I MAY, THE FACT THAT
5 MY CLIENT HAD OTHER GUNS IN HIS HOUSE IS TOTALLY
6 IRRELEVANT. THE JURY SHOULD NEVER HAVE HEARD IT,
7 BECAUSE WE KNOW THAT GUN OWNERSHIP IS A HIGHLY
8 POLITICALLY CHARGED ISSUE.

9 THERE WERE SOME ISSUES WITH RESPECT TO VOIR
10 DIRE THAT I WILL GET INTO, BUT THE FACT THAT THERE WAS
11 NOT A THOROUGH EXPLORATION OF THE JUROR'S ATTITUDES
12 WITH RESPECT TO GUNS, AND THEN THERE WAS EVIDENCE
13 ADMITTED THAT WAS TOTALLY IRRELEVANT THAT MY CLIENT HAD
14 ADDITIONAL GUNS IN THE HOME, ALLOWED THEM TO DRAW A
15 NEGATIVE INFERENCE FROM THAT. IT SHOULD HAVE BEEN
16 EXCLUDED. IT WAS PREJUDICIAL.

17 WE DON'T KNOW WHAT ROLE IT PLAYED WITH EACH
18 INDIVIDUAL JUROR. BUT IT SHOULD NOT HAVE BEEN ALLOWED
19 AND IT IS YET ONE FACTOR, ONE OF THE MISTAKES IN THE
20 TRIAL THAT SHOULD BE CORRECTED BY WAY OF A NEW TRIAL.

21 THE COURT: ALL RIGHT.

22 THAT ASSERTION IS, AT THIS POINT, AND WHAT
23 HAS BEEN PUT ON THE RECORD, BESIDES THE MOTION, AND THE
24 OPPORTUNITY TO PUT IT ON THE RECORD, THE COURT HAS
25 GIVEN YOU EVERY OPPORTUNITY TO SHOW HOW IT HAS BEEN

1 PREJUDICIAL, AND YOU ARE NOT.

2 AT THIS POINT, AGAIN, IT'S MERE SPECULATION.

3 IT'S LESS THAN MERE SPECULATION, IT'S A POSSIBILITY.

4 MR. FREEMAN: JUDGE --

5 THE COURT: COUNSEL, I DID NOT INTERRUPT YOU.

6 MR. FREEMAN: I APOLOGIZE.

7 THE COURT: WE'LL GET INTO THE ISSUE AGAIN ON
8 VOIR DIRE. BUT I DISAGREE THAT THE ISSUE WAS NOT
9 COVERED. CLEARLY IT WAS. AND, IN FACT, I KNOW AT
10 PART -- AT LEAST ONE OF THE QUESTIONS WAS SPECIFICALLY
11 SUBMITTED BY COUNSEL FOR THE COURT TO ASK ABOUT A GUN;
12 BUT THE COURT DID COVER THAT ISSUE.

13 BEYOND THAT, THE WAY THAT THE EVIDENCE WAS
14 PRODUCED WAS IN A WAY PERTAINING TO FOLLOW-UP
15 QUESTIONS, PERTAINING TO THE RES GESTAE OF THE CASE,
16 WHAT HAPPENED, WHAT THE POLICE DID ON THAT DAY, WHAT
17 THEY SAW. THAT WAS IT. IT WAS PRETTY MUCH IN
18 FOLLOW-UP QUESTIONS.

19 YOU CAN CHARACTERIZE IT, BUT THAT'S ALL YOU
20 HAVE DONE SO FAR, AS SHOWING THAT ALTHOUGH THEY WERE
21 INSTRUCTED ON THE RIGHT TO CARRY, THE RIGHT TO CARRY A
22 WEAPON, AND THAT THE DEFENDANT HAD THAT RIGHT, AND THE
23 WEAPONS IN THE HOME; THERE IS NO SHOWING THAT THAT
24 INFORMATION WAS PREJUDICIAL OR SUBMITTED TO THE JURY IN
25 A PREJUDICIAL MANNER.

1 AT THIS POINT, THE COURT IS GOING TO DENY THE
2 MOTION ON THAT POINT.

3 YOUR NEXT ISSUE.

4 MR. FREEMAN: JUST FOR THE RECORD, I BELIEVE
5 THAT THERE MIGHT BE A NEED FOR AN EVIDENTIARY HEARING
6 ON THAT ISSUE. WE MAY HAVE TO PARADE EACH AND EVERY
7 ONE OF THOSE JURORS IN HERE AND ASK THEM WHAT FACTOR
8 DID THAT PLAY. IF THE BASIS FOR THE COURT -- FOR THE
9 RECORD, I UNDERSTAND YOU HAVE RULED. BUT FOR PURPOSES
10 OF THE RECORD, I THINK THAT WE ARE ENTITLED TO AN
11 EVIDENTIARY HEARING ON THAT PARTICULAR ISSUE.

12 I'LL MOVE ON TO THE NEXT WISH, IF I MIGHT.

13 THE COURT: YES.

14 MR. FREEMAN: YOUR HONOR, WITH RESPECT TO THE
15 ARGUMENTS THAT ARE MADE ON PAGE 6, THE WAY THAT THE
16 FACTS WERE CHARACTERIZED, AND THE WAY THAT THE LAW WAS
17 PRESENTED TO THIS JURY WAS SUCH --

18 THE COURT: I DON'T KNOW WHAT KIND OF ORDER
19 YOU ARE PROCEEDING ON, BUT ON PAGE 5, YOU STILL HAVE
20 THE VOIR DIRE ISSUE.

21 MR. FREEMAN: YOUR HONOR, THAT'S CORRECT.

22 ON PAGE 5, BECAUSE THIS WAS UNDER THE HEADING
23 THAT WE HAVE ALREADY DISCUSSED, THAT'S WHY I MOVED ON,
24 BUT I WOULD BE HAPPY TO ADDRESS IT.

25 THE COURT: I'M NOT ASKING YOU IF YOU WANT TO

1 ADDRESS IT AT ANY POINT. YOU SHOULD ADDRESS IT AT THE
2 POINT YOU ARE.

3 I DON'T WANT YOU TO SKIP IT, AND THEN GO
4 BACK, BECAUSE IT'S VERY CONFUSING THAT WAY. IF YOU
5 WANT TO ADDRESS IT, IT SHOULD BE ADDRESSED NOW.

6 MR. FREEMAN: OKAY. I WILL THEN DO THAT.

7 JUDGE, THE COURT ASKED THE JURY HOW MANY
8 INDIVIDUALS HAD GUNS OR CCW PERMITS, AND WHETHER THEY
9 COULD SET ASIDE THEIR POTENTIALLY PRO-GUN VIEWS, BUT
10 THE CONVERSE QUESTION WAS NOT ASKED.

11 THE COURT: THAT'S NOT TRUE. PAGE 21, IN THE
12 VOIR DIRE, THE COURT SPECIFICALLY STATED THAT -- PAGE
13 20, LINES 22 TO 25 AND THEN PAGE IN 21, LINE. I DON'T
14 KNOW IF YOU HAVE A TRANSCRIPT RIGHT BEFORE YOU. I
15 ACTUALLY DON'T. BUT A FAIR READING OF THAT TRANSCRIPT
16 WOULD SHOW THOSE ISSUES -- IF ONE OF YOU WANTED TO
17 MAYBE READ PART OF THAT BEFORE YOU PROCEED, SO THAT I
18 CAN HAVE A RECORD OF IT?

19 MAYBE THE PROSECUTOR SHOULD READ IT INTO THE
20 RECORD. WE ARE NOT GOING TO BE READING PAGES, BUT I
21 JUST WANT A RECORD OF IT. I DON'T HAVE THE TRANSCRIPT
22 RIGHT IN FRONT OF ME.

23 MS. DODDAMANI: I'M HAPPY TO, JUDGE. NOW THE
24 CHARGES IN THIS PARTICULAR CASE YOU HEARD, ASSAULT WITH
25 A DANGEROUS WEAPON, DID MAKE AN ASSAULT UPON ERIC

1 WATSON WITH A DANGEROUS WEAPON, TO WIT: A PISTOL,
2 WITHOUT INTENT TO COMMIT THE CRIME OF MURDER OR INFLECT
3 GREAT BODILY HARM LESS THAN THE CRIME OF MURDER AND
4 FELONY FIREARM, A PISTOL.

5 IS THERE ANYONE HERE WHO HAS HAD SIMILAR
6 EXPERIENCES IN THEIR LIVES, EITHER BEING CHARGED OR THE
7 VICTIM OF ANY TYPE OF OFFENSE? IS THERE ANYONE WELL,
8 ON THE CHARGE OF FELONY FIREARM, LET ME TELL YOU THAT
9 MOST PEOPLE HAVE OPINIONS ABOUT GUNS. THE USE OF GUNS
10 AND THE RIGHT TO HAVE A GUN.

11 SOME PEOPLE FEEL THAT EVERYONE SHOULD HAVE A
12 RIGHT TO HAVE A GUN, SOME FEEL NO ONE SHOULD, AND SOME
13 PEOPLE FEEL -- A LOT OF PEOPLE FEEL IN BETWEEN.

14 NOW, I WOULD NOT, OF COURSE, DENY YOU YOUR
15 RIGHT TO HAVE AN OPINION, BUT I DO WANT TO TELL YOU AT
16 THE END OF THIS TRIAL I'M AM GOING TO HIS(SIC)' THESE
17 TWO CHARETS AND HIS(SIC) THE ELEMENTS OF THEM. WHAT
18 ARE THE ELEMENTS OF THESE CHARGES NUMBERED. AND
19 WHATEVER I TELL YOU, AS FAR AS THE LAW, YOU MUST BE
20 ABLE TO AGREE TO FOLLOW IT.

21 THERE IS SOME PEOPLE WHOSE OPINION IS SO
22 STRONG AND INFLEXIBLE THAT THEY CAN'T FOLLOW THE LAW IN
23 DECIDING SOMETHING. THEY WANT TO FOLLOW WHAT THEY
24 THINK.

25 THE COURT: ALL RIGHT. IF I COULD STOP YOU

1 THERE.

2 CLEARLY THAT'S TALKING ABOUT BOTH SIDES; BOTH
3 PEOPLE WHO BELIEVE THAT EVERYONE HAS A RIGHT TO HAVE,
4 SHOULD HAVE A RIGHT TO HAVE A GUN, AS WELL AS PEOPLE
5 WHO BELIEVE THAT NO ONE SHOULD. SO THAT IS COVERED.
6 WHAT PAGE IS THAT?

7 MS. DODDAMANI: THAT'S PAGE 21.

8 THE COURT: GO AHEAD.

9 MS. DODDAMANI: IS THERE ANY ONE WHO HAS SUCH
10 A STRONG OPINION ABOUT FIREARMS THAT YOU DON'T THINK
11 YOU CAN FOLLOW THE LAW I WOULD GIVE? YOU WANT TO SET
12 YOUR OWN? IS THERE ANYONE WHO HAS THAT FEELING?
13 ANYONE? ALL RIGHT.

14 IS THERE ANYONE WHO -- HOW MANY OF YOU HAVE A
15 CCW PERMIT OR A GUN AT HOME? RAISE YOUR HAND. THOSE
16 OF YOU WHO RAISED YOUR HAND, I KNOW YOU DON'T KNOW MUCH
17 ABOUT THIS CASE YET. BUT AT THIS TIME, DO YOU THINK
18 YOU CAN SET ASIDE YOUR OWN PERSONAL SITUATION AND
19 DECIDE THIS CASE JUST BY THE EVIDENCE AND LAW IN THIS
20 CASE AND NOTHING ELSE?

21 YOU ASKED A NUMBER OF JURORS.

22 MR. FREEMAN: BUT THE QUESTION IS NOT ASKED.

23 THE COURT: IT WAS ASKED BEFORE THAT, ON PAGE
24 20. WERE YOU LISTENING? AS I RECALL, THAT WAS MORE OF
25 A BROAD ASSERTION, THAT EVERYBODY HAS TO SET ASIDE

1 THEIR OPINIONS.

2 MR. FREEMAN: THE COURT MINED INTO THE ISSUE
3 AS FAR AS PEOPLE WHO MAY HAVE PRO-GUN VIEWS.

4 THE COURT: THAT'S IN YOUR OPINION, AND THE
5 COURT DENIES THE MOTION ON THAT GROUND. CLEARLY IT WAS
6 ASKED. IF THERE IS ANYONE WHO FEELS THAT NO ONE SHOULD
7 HAVE THE RIGHT TO HAVE GUNS, THAT WAS SPECIFICALLY
8 ASKED. YOU CAN ONLY ASK IT THAT WAY. YOU CAN'T SAY,
9 JUST SAY IS THERE ANYONE WHO DOESN'T HAVE A PERMIT TO
10 CARRY A CCW. BECAUSE THAT DOESN'T ENURE TO AN OPINION.

11 I SAID, IS THERE ANYONE WHO FEELS THAT NO ONE
12 SHOULD HAVE A RIGHT TO HAVE A GUN, AND IF SO CAN YOU
13 SET ASIDE THAT OPINION. SO THE ISSUE IS WELL COVERED
14 BY THAT.

15 MOVE ON TO YOUR NEXT ISSUE.

16 MR. FREEMAN: YOUR HONOR, STARTING ON PAGE 6,
17 MOVING OVER TO PAGE 8, AND PORTION OF TEXT THAT IS
18 INCLUSIVE THERE, WHAT WAS ARGUED TO THE JURY AND WHAT
19 THE JURY WAS INSTRUCTED IS THAT ESSENTIALLY THE DISPLAY
20 OF A FIREARM CONSTITUTES THE USE OF DEADLY FORCE, AND
21 THAT IS NOT THE LAW.

22 THE ACTUAL USE OF DEADLY FORCE -- WHEN WE ARE
23 TALKING ABOUT A FIREARM -- UNLESS IT IS BEING USED TO
24 BEAT SOMEBODY WITH; WHAT WE ARE TALKING ABOUT IS
25 ACTUALLY PULLING THE TRIGGER.

1 THE COURT: I READ YOUR MOTION AND ALTHOUGH
2 IT IS ARGUMENT ABOUT YOUR OPINIONS; WHERE IS THE
3 STATEMENT OF THE SPECIFIC JURY INSTRUCTION THAT WAS A
4 MISSTATEMENT OR THAT WAS INCORRECT, IN YOUR OPINION,
5 AND THE CORRECT JURY INSTRUCTION?

6 MR. FREEMAN: THE MERE FACT THAT THE JURY WAS
7 INSTRUCTED, AS IF THIS WERE THE ACTUAL USE OF DEADLY
8 FORCE, AND THE JURY WAS TOLD THAT IN ORDER FOR --

9 THE COURT: COUNSEL, RATHER THAN ARGUING YOUR
10 OPINION, IF YOU COULD STATE -- THE COURT HAS GIVEN THE
11 JURY INSTRUCTION TO THE JURY THAT IT READ. IT WASN'T
12 IN -- THE COURT DOESN'T ARGUE TO A JURY. SO IT'S
13 REALLY, IT WAS A LITTLE DIFFICULT TO GET THROUGH YOUR
14 MOTION AS FAR AS ASSERTING THAT THE JURY WAS
15 MISINSTRUCTED. YET RATHER THAN USING JURY INSTRUCTION
16 NUMBERS OR NAMES, YOU ARE JUST GOING BASICALLY WITH
17 WHAT YOU'RE PUTTING ON THE RECORD.

18 SO FIRST OF ALL, I'M GOING TO LET THE
19 PROSECUTOR RESPOND TO THAT ON THE RECORD, SO MAYBE --

20 MR. FREEMAN: I WASN'T FINISHED.

21 THE COURT: I'M GOING TO LET HER ADDRESS THE
22 ISSUE, THEN I'LL LET IT GO BACK TO YOU, BECAUSE WHAT I
23 AM REQUESTING OF YOU IS TO GET THE POINT OF THE LAW AND
24 SPECIFIC JURY INSTRUCTION, RATHER THAN YOUR ARGUMENT AT
25 THIS POINT I THINK THAT WOULD BE EASIER TO FOLLOW, WITH

1 THE PROSECUTOR'S STATEMENT FIRST.

2 GO AHEAD.

3 MS. DODDAMANI: THANK YOU, JUDGE.

4 MY UNDERSTANDING OF WHAT COUNSEL'S ARGUMENT
5 IS, IS THAT THE DEADLY FORCE INSTRUCTION SHOULD NOT
6 HAVE BEEN GIVEN BECAUSE NO DEADLY FORCE WAS USED;
7 BECAUSE THE DEFENDANT -- THE EVIDENCE SHOWED THE
8 DEFENDANT MERELY BRANDISHED A WEAPON.

9 BUT WHAT MY READING OF THE TRANSCRIPT IS, I
10 HAVE THE DETAILS, AND ALL OF THE STATEMENTS, WHERE EVEN
11 THE DEFENDANT SAID THAT HE POINTED THE GUN AT THE
12 VICTIM.

13 THIS IS A QUESTION OF DISPLAYING A GUN VERSUS
14 POINTING A GUN, AND CLEARLY A GUN WAS POINTED, WHICH IS
15 WHY WE BELIEVE THE DEADLY FORCE INSTRUCTION WAS GIVEN.

16 THAT'S MY ARGUMENT.

17 MR. FREEMAN: JUDGE, SELF-DEFENSE IS AN
18 AFFIRMATIVE DEFENSE, WHICH REQUIRES MR. OGILVIE TO HAVE
19 AN HONEST AND REASONABLE BELIEF THAT HE WAS FACING AN
20 IMMINENT THREAT OF DEATH.

21 THE COURT: BUT YOU ARE NOT ADDRESSING -- WE
22 HAVE TO ADDRESS ONE ISSUE AT A TIME.

23 YOUR ARGUMENT HERE THAT YOU STARTED WITH, WAS
24 THE USE OF DEADLY FORCE, AND YOU'RE ARGUING ABOUT
25 BRANDISHING, AND SHE IS RESPONDING TO THAT.

1 NOW YOU ARE SWITCHING TO SELF-DEFENSE.

2 MR. FREEMAN: NO, JUDGE. THE WAY THE JURY
3 WAS INSTRUCTED ON THE LAW OF SELF-DEFENSE HERE, AND
4 SPECIFICALLY IN THIS PARTICULAR ISSUE, WHAT MR. OGILVIE
5 HAD TO BELIEVE IN ORDER TO USE DEADLY FORCE; THAT WAS
6 INCORRECT. BECAUSE MR. OGILVIE, THE EVIDENCE SHOWED,
7 THERE WAS NO ACTUAL USE OF DEADLY FORCE. WHAT THERE
8 WAS WAS A THREATENED USE OF DEADLY FORCE.

9 THE COURT: HOW DO YOU FIGURE THAT?

10 MR. FREEMAN: HE DIDN'T PULL THE TRIGGER, AND
11 IT DIFFUSED THE SITUATION.

12 YOUR HONOR, YOU CAN ASK ANY LAW ENFORCEMENT
13 OFFICER, THEY TAKE GRADUATED STEPS WHEN IN A VIOLENT
14 SITUATION. THEY START WITH THE LEAST SEVERE.

15 THE COURT: I DON'T WANT TO KNOW ABOUT YOUR
16 BACKGROUND IN POLICE POLICY. WE ARE TALKING ABOUT THE
17 LAW.

18 MR. FREEMAN: I'M TRYING TO EXPLAIN --

19 THE COURT: STOP. I WANT YOU TO ADDRESS THE
20 LAW AS FAR AS SPECIFIC JURY INSTRUCTIONS YOU THINK WERE
21 INAPPROPRIATE, AND INSTEAD OF JURY INSTRUCTIONS THAT
22 WERE GIVEN, BECAUSE THEY ARE READ. JURY INSTRUCTIONS
23 ARE NOT JUST AN ARGUMENT OR A LECTURE ON THE LAW, THESE
24 ARE SET JURY INSTRUCTIONS. AND SO IF YOUR ARGUMENT IS
25 FELONIOUS ASSAULT CANNOT BE COMMITTED UNLESS YOU PULL

1 THE TRIGGER, I CAN'T REALLY BUY THAT BECAUSE THAT'S NOT
2 THE LAW.

3 IF YOU WANT TO GO BACK AND INSTRUCT ME ON
4 POLICE POLICY, AND HOW POLICE OFFICERS ARE TRAINED,
5 THAT'S NOT HELPFUL TO THIS ISSUE, BECAUSE THIS IS A
6 LEGAL ISSUE ON A JURY INSTRUCTION; LAW THAT IS GIVEN TO
7 THE JURY.

8 SO YOU NEED TO BETTER IDENTIFY AND STATE YOUR
9 LEGAL ARGUMENTS WITH LEGAL POSITIONS.

10 MR. FREEMAN: YOUR HONOR, THE JURY WAS TOLD
11 THAT THE DEFENDANT NEEDED THE SAME LEVEL OF FEAR AND
12 PROVOCATION.

13 THE COURT: STOP. YOU CANNOT ARGUE THE JURY
14 WAS TOLD. I WOULD ASK YOU --

15 MR. FREEMAN: INSTRUCTED.

16 THE COURT: YES. THE JURY WAS GIVEN THE
17 INSTRUCTIONS. STATE THE INSTRUCTION. TELL ME WHAT
18 SUBSTITUTE INSTRUCTION YOU FEEL SHOULD HAVE BEEN GIVEN.

19 MR. FREEMAN: I'M TRYING TO DO THAT.

20 THE COURT: ALL RIGHT. START WITH THE
21 INSTRUCTION NAME AND NUMBER, THEN.

22 MR. FREEMAN: I DON'T BELIEVE THE RECORD
23 SHOWS THEY WERE NAMED AND NUMBERED.

24 THE COURT: THERE IS NOT.

25 THE JURY INSTRUCTIONS AND THE TITLES YOU CAN

1 EASILY HAVE GOTTEN THE NAME AND NUMBER FROM. BUT THERE
2 IS ALSO -- WE KEEP THESE SINCE YOU ARE NOT THE TRIAL
3 ATTORNEY. SO WE HAVE THE JURY INSTRUCTIONS.

4 MR. FREEMAN: JUDGE, I'M HOLDING THE
5 TRANSCRIPT OF THE TRIAL. THIS IS WHAT I BASED MY
6 ARGUMENT ON, NOT WHAT IS WRITTEN ON A PIECE --

7 THE COURT: I UNDERSTAND THAT.

8 MR. FREEMAN: BASED UPON MY ARGUMENT ON WHAT
9 THE JURY WAS SPECIFICALLY TOLD, WHICH IS ALL WRITTEN
10 DOWN, AND WHAT THIS JURY WAS TOLD IS THAT MR. OGILVIE
11 HAD TO HAVE THE SAME DEGREE OF PROVOCATION.

12 THE COURT: AS AN ATTORNEY, DO YOU KNOW WHAT
13 INSTRUCTION THAT IS?

14 MR. FREEMAN: YOUR HONOR, I WOULD BE HAPPY TO
15 TAKE THE COURT'S TIME AND FIND IT.

16 THE COURT: AFTER YOU LOOK IN THE TRANSCRIPT,
17 I'M GOING TO RECALL THIS CASE AFTER YOU FIND THE JURY
18 INSTRUCTIONS.

19 THANK YOU.

20 MR. FREEMAN: I WILL NEED A COPY OF THE JURY
21 INSTRUCTIONS THEN, YOUR HONOR.

22 THE COURT: YOU CAN HAVE THESE.

23 MR. FREEMAN: I'M GOING ON WHAT THE JURY IS
24 TOLD, NOT WHAT IS WRITTEN ON PAPER.

25 THE COURT: YOU CAN COMPARE THEM. COMPARING

1 THEM WOULD BE HELPFUL TO YOUR ARGUMENT.

2 MR. FREEMAN: FINE.

3 THE COURT: GIVE HIM THE JURY INSTRUCTIONS
4 BOOK, AND LET HIM PREPARE.

5 (BRIEF RECESS)

6 THE CLERK: RECALLING CASE NUMBER 09-25646,
7 PEOPLE VERSUS ERIC OGILVIE.

8 MS. DODDAMANI: SITA DODDAMANI, AGAIN, FOR
9 THE PEOPLE.

10 MR. FREEMAN: JOHN FREEMAN ON BEHALF OF
11 MR. OGILVIE, WHO IS SEATED AT COUNSEL'S TABLE.

12 THE COURT: AGAIN, I GAVE YOU BOTH AN
13 OPPORTUNITY FOR LEGAL ARGUMENT ON THE REMAINING ISSUES.
14 YOU MAY PROCEED.

15 MR. FREEMAN: THANK YOU, JUDGE.

16 BEFORE WE TOOK A BREAK, WE WERE TALKING ABOUT
17 THE JURY INSTRUCTIONS WITH RESPECT TO DEADLY FORCE.

18 I WANT TO, WITH THE COURT'S PERMISSION,
19 HIGHLIGHT WHERE I THINK THERE ARE SOME PROBLEMS. THE
20 PROBLEMS ARE NOT JUST WITH THE JURY INSTRUCTIONS, THEY
21 ARE ALSO A COMBINATION OF THE JURY INSTRUCTIONS AND THE
22 ARGUMENTS BY THE PROSECUTION.

23 IN BOTH OF THOSE SITUATIONS, THE ARGUMENTS BY
24 THE PROSECUTION AND THE JURY INSTRUCTIONS, THERE WAS A
25 FAILURE TO MAKE A DISTINCTION, AND THE DISTINCTION

1 SHOULD HAVE BEEN BETWEEN THE USE AND THE THREATENED
2 USE.

3 LET ME GIVE YOU, THE COURT, AN EXAMPLE,
4 PLEASE. IF SOMEONE PUNCHES ME, UNLESS IT'S MIKE TYSON,
5 IT'S PROBABLY NOT GOING TO KILL ME. IF I AM DOING
6 SOMETHING TO THAT PERSON AND THEY SAY: HEY, GET AWAY,
7 OR I AM GOING TO PUNCH YOU, THEY HAVE THREATENED TO USE
8 FORCE, BUT THEY HAVEN'T ACTUALLY USED IT.

9 IN THIS SITUATION WITH MR. OGILVIE, HE DIDN'T
10 ACTUALLY USE DEADLY FORCE, BECAUSE HE DIDN'T PULL THE
11 TRIGGER. WHAT HE DID WAS THREATEN THE USE.

12 THE COURT: COUNSEL, I HAVE HEARD THIS
13 ARGUMENT AND I HAVE ALSO READ IT, AND IT SOUNDS LIKE A
14 CLOSING ARGUMENT.

15 MR. FREEMAN: WHAT I'M ASKING -- I'M TRYING
16 TO POINT OUT FOR THE COURT, IS THE PROPOSAL, OR WHAT I
17 WOULD HAVE ASKED THIS COURT TO INSTRUCT THE JURY ON,
18 NOT THE USE OF DEADLY FORCE, NOT EVEN THE USE OF FORCE,
19 BUT RATHER THE THREATENED USE OF DEADLY FORCE.

20 I WOULD LIKE TO POINT TO A SPECIFIC PORTION
21 OF THE RECORD WHERE THE JURY WAS SPECIFICALLY
22 INSTRUCTED ON THE USE OF DEADLY FORCE. TURNING TO PAGE
23 185 ON LINE 20, THE JURY WAS INSTRUCTED: FIRST, AT THE
24 TIME HE ACTED, THE DEFENDANT MUST HAVE HONESTLY AND
25 REASONABLY BELIEVED HE WAS HE IN DANGER OF BEING KILLED

1 OR SERIOUSLY INJURED OR SEXUALLY ASSAULTED. THAT IS
2 WHAT IS REQUIRED FOR THE ACTUAL USE OF DEADLY FORCE.

3 THAT IS A HIGHER STANDARD THAN WHAT IS
4 REQUIRED FOR JUST THREATENED USE OF DEADLY FORCE.

5 TURNING TO PAGE 186, AT LINE 7, THE JURY WAS
6 INSTRUCTED: SECOND, A PERSON MAY NOT KILL OR SERIOUSLY
7 INJURY -- IT'S A MISTAKE IN THE ORIGINAL -- ANOTHER
8 PERSON JUST TO PROTECT HIMSELF AGAINST WHAT SEEMS LIKE
9 A THREAT OF ONLY MINOR INJURY. THE DEFENDANT MUST HAVE
10 BEEN AFRAID OF DEATH OR SERIOUS PHYSICAL INJURY OR
11 SEXUAL ASSAULT.

12 HERE THE COURT IS COMPARING THE STANDARD FOR
13 SELF-DEFENSE COUNT FOR ACTUAL USE OF FORCE WITH A
14 STATEMENT REGARDING THE KILLING OR THE SERIOUS INJURY
15 OF ANOTHER PERSON.

16 ON PAGE 188, AT LINE 23, THE JURY WAS
17 INSTRUCTED: A PERSON CAN USE DEADLY FORCE IN
18 SELF-DEFENSE ONLY WHERE IT IS NECESSARY TO DO SO. IF
19 THE DEFENDANT COULD HAVE SAFELY RETREATED, BUT DID NOT
20 DO SO, YOU MAY CONSIDER THAT FACTOR IN DECIDING WHETHER
21 THE DEFENDANT HONESTLY AND REASONABLY BELIEVED HE
22 NEEDED TO USE DEADLY FORCE IN SELF-DEFENSE.

23 THE INSTRUCTION CONTINUES, AND I'M NOT GOING
24 TO TAKE UP THE COURT'S TIME TO READ IT. BUT IT GOES
25 ALL THE WAY DOWN ON PAGE 189 TO LINE 16, AND THERE ARE

1 SEVERAL INSTANCES IN THERE WHERE THE JURY WAS
2 INSTRUCTED ABOUT THE USE OF DEADLY FORCE.

3 POINTING A GUN AT SOMEBODY IS THE
4 THREATENED USE OF DEADLY FORCE; IT IS NOT THE ACTUAL
5 USE. AND IT ISN'T JUST ME SAYING THAT, THERE IS A
6 GREAT DEAL OF LAW ON THIS TOPIC WHICH IS CITED IN MY
7 BRIEF.

8 IF I MAY JUST HAVE A MOMENT, YOUR HONOR, I'M
9 LOOKING NOW AT PAGE 6. THERE ARE CASES FROM MAINE,
10 FLORIDA, MASSACHUSETTS, TEXAS AND THEN THERE ARE ALSO
11 STATUTES, IN OTHER STATES SUCH AS NEW JERSEY, NEBRASKA,
12 THAT ALL STAND FOR THAT PROPOSITION THAT THERE IS A
13 FUNDAMENTAL DISTINCTION BETWEEN THE USE OF DEADLY FORCE
14 AND THE THREATENED USE OF DEADLY FORCE.

15 WHAT THIS JURY WAS INSTRUCTED WITH RESPECT TO
16 THE ACTUAL USE OF DEADLY FORCE WAS INAPPROPRIATE IN
17 THIS PARTICULAR CASE.

18 YOUR HONOR, ALSO AT PAGES 165 AND AGAIN AT
19 167, PARTICULARLY LINE 15, THE PROSECUTION SPECIFICALLY
20 ARGUED THAT MR. OGILVIE -- PROSECUTION SPECIFICALLY
21 ARGUED THAT MR. OGILVIE USED -- THIS WAS A DEADLY FORCE
22 CASE. PAGE 167, LINE 15, THE PROSECUTOR'S CLOSING
23 ARGUMENT: THE LAW ALLOWS THAT YOU CAN USE DEADLY FORCE
24 IF YOU FEEL LIKE YOU WERE IN DANGER. AND THE
25 PROSECUTOR CONTINUES.

1 AGAIN, THE MIXTURE OF THE COURT'S INSTRUCTION
2 COMBINED WITH THE PROSECUTOR'S ARGUMENT LED THE JURY IN
3 A DIRECTION WHERE IT MISCONSTRUED OR WAS TOLD
4 INCORRECTLY WHAT THE LAW WAS, WAS INSTRUCTED THAT WAY,
5 AND THERE IS AN IMPORTANT PRINCIPLE THAT IS AT WORK
6 HERE. THAT IS, IF A JURY COULD HAVE CORRECTLY OR
7 INCORRECTLY UNDERSTOOD THE JURY INSTRUCTION, WHEN YOU
8 LOOK BACK AND MONDAY MORNING QUARTER BACK; YOU HAVE TO
9 PRESUME THAT THEY UNDERSTOOD IT INCORRECTLY. IN
10 SANSTRUM(PHONETIC) VERSUS MONTANA, A UNITED STATES
11 SUPREME COURT CASE, I DO NOT UNFORTUNATELY HAVE THE
12 CITE, STANDS FOR THAT PROPOSITION.

13 I HAVE TAKEN A LOOK AT THE MICHIGAN CRIMINAL
14 JURY INSTRUCTIONS THAT THE COURT PROVIDED DURING THE
15 BREAK. I AM NOT USING THAT THERE IS ANY DELIBERATE
16 DESIRE TO MISINFORM THE JURY ON THE LAW. I'M NOT
17 SAYING THAT AT ALL. BUT THE FACT THAT SOMETHING IS
18 WRITTEN IN THE PATENT JURY INSTRUCTIONS DOES NOT
19 NECESSARILY MAKE IT CORRECT. THERE IS NOTHING -- I SEE
20 YOU'RE PUZZLED.

21 THE COURT: COUNSEL, I WAS GIVING YOU THOSE
22 INSTRUCTIONS FOR YOU TO HAVE AN OPPORTUNITY TO MAKE A
23 RECORD. YOU STATE YOU WOULD HAVE REQUESTED DIFFERENT
24 INSTRUCTIONS. SO I WANTED TO GIVE YOU THE OPPORTUNITY
25 TO MAKE A RECORD OF WHAT INSTRUCTION, SPECIFICALLY,

1 WITH THE NUMBER AND NAME, YOU WOULD HAVE GIVEN; SINCE
2 YOU DON'T HAVE IT WITH YOU. THAT'S THE REASON.
3 BECAUSE WHATEVER ELSE YOU ARE SAYING -- GO AHEAD.

4 MR. FREEMAN: JUDGE, THE INSTRUCTION THAT
5 SHOULD HAVE BEEN GIVEN IS NOT PRINTED IN HERE, BECAUSE
6 THE PATENT INSTRUCTIONS DO NOT ACCOUNT FOR THE
7 DISTINCTION; THE VERY IMPORTANT DISTINCTION THAT ALL
8 THESE OTHER STATES MAKE.

9 THE COURT: EXACTLY.

10 MR. FREEMAN: BETWEEN THE THREATENED USE AND
11 ACTUAL USE. AND JUST BECAUSE -- UNLIKE THE CIVIL
12 PATENT INSTRUCTIONS, THE USE OF THE CRIMINAL JURY
13 PATENT ONES IS NOT MANDATORY. IT HAS NOT BEEN APPROVED
14 BY THE MICHIGAN SUPREME COURT.

15 I HAVE CITED A COUPLE OF CASES WITH RESPECT
16 TO THAT PROPOSITION AT FOOT NOTE 6, ON PAGE 7, IN THE
17 MOTION.

18 YOUR HONOR, THERE IS ANOTHER ERROR IN THE
19 JURY INSTRUCTIONS THAT HAS TO DO WITH THE INSTRUCTIONS
20 THAT THE JURY RECEIVED REGARDING THE DUTY TO RETREAT.
21 THERE SHOULD NOT HAVE BEEN ANY MENTION, AT ALL, IN THIS
22 CASE REGARDING A DUTY TO RETREAT.

23 WHAT I AM REFERRING TO IS THE INSTRUCTION
24 THAT APPEARS AT PAGE 188, LINE 23 THROUGH 189, AT LINE
25 3. THAT IS THE INITIAL PROBLEM WE HAVE ALREADY

1 DISCUSSED, WHICH IS THE TERM USE OF DEADLY FORCE. BUT
2 ALSO COMBINED WITH THAT INSTRUCTION, IT CREATES --
3 THERE IS LANGUAGE THAT SPECIFICALLY STATES A PERSON CAN
4 USE DEADLY FORCE IN SELF-DEFENSE ONLY WHERE IT IS
5 NECESSARY TO DO SO.

6 IF THE DEFENDANT COULD HAVE SAFELY RETREATED,
7 BUT DID NOT DO SO, YOU MAY CONSIDER THAT FACTOR IN
8 DECIDING WHETHER THE DEFENDANT HONESTLY AND REASONABLY
9 BELIEVED HE NEEDED TO USE DEADLY FORCE IN SELF-DEFENSE.
10 THIS SELF-DEFENSE -- THAT INSTRUCTION GIVEN THE STATE
11 OF THE LAW, IN THE STATE OF MICHIGAN AT THE PRESENT
12 TIME, AND TIME OF THE OFFENSE, IS INCORRECT.

13 THERE IS NO DUTY TO RETREAT. AND THE JURY
14 SHOULDN'T HAVE BEEN TOLD ANYTHING ABOUT DUTY TO
15 RETREAT.

16 THE COURT: SO YOU ARE SAYING THAT DUTY TO
17 RETREAT CJI, 2ND 716, THE NEW INSTRUCTION FOR USE AFTER
18 USE AFTER OCTOBER 1ST, OF 2006, SHOULD NOT HAVE BEEN
19 GIVEN, OR JUST THE COURT SUA SPONTE SHOULD HAVE DELETED
20 NO. 1, AND JUST READ NO. 2?

21 MR. FREEMAN: JUDGE, I CAN ONLY GO ON WHAT I
22 SEE IN THE RECORD. I'M NOT PREPARED TO DEBATE IT.

23 THE COURT: COUNSEL, THAT'S THE REASON WHY I
24 GAVE YOU A LOT OF TIME AND ALL MY JURY INSTRUCTION
25 BOOKS, SO THAT YOU COULD SEE WHAT THE COURT READ, AND

1 SEE THAT JURY INSTRUCTION, AND ALLOW YOU TO SEE THEM,
2 AT LEAST, BECAUSE YOU CAN READ IT IN THE TRANSCRIPT.
3 BUT IT IS ALSO -- YOU'RE LEAVING OUT -- YOU ARE CAUSING
4 AN UNFINISHED RECORD.

5 THE COURT DID READ NO. 1, WHAT YOU JUST
6 QUOTED WAS NO. 1 OF CJI 2ND, 7.16, NEW INSTRUCTIONS TO
7 BE GIVEN AFTER OCTOBER 1ST, 2006. AND NO. 2 READS:
8 HOWEVER, A PERSON IS NEVER REQUIRED TO RETREAT IF
9 ATTACKED IN HIS OR HER OWN HOME, NOR IF A PERSON REASON
10 REASONABLE BELIEVES THE ATTACKER IS ABOUT TO USE A
11 DEADLY WEAPON, NOR IF THE PERSON IS SUBJECT TO A SUDDEN
12 FIERCE AND VIOLENT ATTACK.

13 FURTHER, A PERSON IS NOT REQUIRED TO RETREAT
14 IF THE PERSON HAS NOT OR IS NOT ENGAGED IN THE
15 COMMISSION OF CRIME AT THE TIME THE DEADLY FORCE IS
16 USED, AND HAS A LEGAL RIGHT TO BE WHERE THE PERSON IS,
17 AND HAS AN HONEST AND REASONABLE BELIEF THAT USE OF
18 DEADLY FORCE IS NECESSARY FOR THE PREVENTION OF
19 IMMINENT DEATH, GREAT BODILY HARM, SEXUAL ASSAULT OF
20 THE PERSON OR ANOTHER.

21 MR. FREEMAN: JUDGE, I HAVE NOT COMPARED
22 WORD-FOR-WORD THE TEXT OF THE CJI TO THE TEXT OF WHAT
23 APPEARS IN THE RECORD ON THE TRANSCRIPT. WHAT I AM
24 SAYING IS THAT WHAT APPEARS IN THIS TRANSCRIPT AT PAGES
25 188, LINE 23 THROUGH 189, LINE 3, IN PARTICULAR, THE

1 ISSUE WITH RESPECT TO SAFELY RETREATING, THAT THAT WAS
2 IN ERROR. THAT'S WHAT I'M SAYING.

3 THE COURT: RESPONSE.

4 MS. DODDAMANI: I DON'T AGREE WITH THAT.

5 I THINK DEFENSE COUNSEL IS TRYING TO READ
6 PART OF THE RECORD, AND NOT INCLUDE THE ENTIRE CJI.

7 THE REASON YOU GAVE HIM THE OPPORTUNITY TO
8 SIT DOWN AND LOOK AT THE JURY INSTRUCTIONS IS SO THAT
9 HE COULD COMPARE WORD-FOR-WORD WHAT THE PROBLEMS WERE,
10 AND WHETHER CERTAIN JURY INSTRUCTIONS SHOULD NOT HAVE
11 BEEN GIVEN. WHAT THE CORRECT JURY INSTRUCTION IS, HAS
12 BEEN MODIFIED TO REFLECT THE LAW CURRENTLY, AND
13 CURRENTLY AFTER THE RULINGS IN 2006.

14 THE DEFENDANT'S ACTIONS, THE SECOND ORIGINAL
15 PART OF THE ARGUMENT, WHICH IS THE THREAT VERSUS THE
16 ACTUAL USE OF DEADLY FORCE. THERE IS NOTHING COUNSEL
17 CAN BRING HERE TO THIS COURT TO SAY, POINTING A GUN IS
18 JUST A THREAT, AND IS NOT AN ACTUAL USE.

19 IT'S OUR POSITION THAT POINTING A GUN AT
20 SOMEONE WITH THE ABILITY TO PULL A TRIGGER IS THE USE
21 OF DEADLY FORCE; BECAUSE COMMON SENSE TELLS US THAT,
22 JUDGE. THE CORRECT THING WAS READ; THE MODEL JURY
23 INSTRUCTION, 7.16. IT HAS BEEN CHANGED TO REFLECT THE
24 CURRENT STATUTORY CHANGES.

25 THANK YOU.

1 MR. FREEMAN: JUDGE, IN RESPONSE TO THE WHOLE
2 ISSUE OF THREAT OF DEADLY FORCE, IT'S NOT ME SAYING IT.
3 I'M BASING IT ON WHAT I HAVE CITED IN THIS BRIEF, AT
4 PAGE 6: MAIN VERSUS WILLIAMS, STEWART VERSUS FLORIDA,
5 TOLEDO V. FLORIDA, MASSACHUSETTS VERSUS CATALDO,
6 MASSACHUSETTS VERSUS KLEIN, NEW YORK VERSUS MAGLIATO,
7 MATTOX VERSUS TEXAS, AND ALSO PARENTHETICALS INCLUDED,
8 SOME INFORMATION WITH RESPECT TO NEW JERSEY VERSUS
9 MOORE, WHICH CONSTRUED A NEW JERSEY STATUTE AS HOLDING
10 THAT CONFRONTING AN INDIVIDUAL WITH A FIREARM IS NOT
11 USING DEADLY FORCE.

12 THERE IS A CASE OUT OF NEBRASKA, STATE VERSUS
13 RINCKER, DRAWING A KNIFE ON AN INDIVIDUAL WITH INTENT
14 TO SCARE THE VICTIM IS NOT USING LETHAL FORCE.

15 MS. DODDAMANI: MAY I RESPOND?

16 MR. FREEMAN: SO I HAVE POINTED TO SOMETHING.

17 MS. DODDAMANI: MAY I RESPOND TO THAT?

18 THE COURT: YES.

19 MS. DODDAMANI: THE CASES THAT HE CITED, ONE,
20 ARE NOT MICHIGAN CASES, AND, TWO, ARE CASES WHERE
21 SOMEONE DISPLAYING OR BRANDISHING NOT POINTING A GUN AT
22 SOMEBODY, AND SAYING I WANT TO HURT YOU RIGHT NOW;
23 WHICH IS WHAT THE TESTIMONY WAS.

24 THE COURT: RIGHT. MISDEMEANOR CASES, IN THE
25 STATE OF MICHIGAN ON THOSE THAT ADDRESS WEAPON USE,

1 THAT ARE NOT FELONIES.

2 IN THIS CASE, THE DEFENDANT WAS CHARGED WITH
3 A FELONY. THE COURT DID GIVE COUNSEL THE OPPORTUNITY
4 TO BOTH REVIEW THE COURT'S JURY INSTRUCTIONS, AND ALSO
5 ANYTHING ELSE COUNSEL WANTED TO REVIEW IN ORDER TO
6 SUBMIT WHAT COUNSEL'S PROPOSED MICHIGAN JURY
7 INSTRUCTION WOULD BE.

8 I HEARD COUNSEL'S ARGUMENT AND DEFENSE
9 COUNSEL ACTUALLY ALREADY RESPONDED TO THE PROSECUTOR'S
10 CURRENT ARGUMENTS, IN STATING THAT THESE ARE OUT OF
11 STATE CASES, AND THERE IS NO SPECIFIC MICHIGAN JURY
12 INSTRUCTION.

13 HOWEVER, COUNSEL WOULD HAVE BEEN EXPECTING
14 THE COURT TO EITHER SUA SPONTE OR UPON COUNSEL'S OWN
15 DECISION ON WHAT HE WOULD HAVE REQUESTED, HE WOULD HAVE
16 ASKED THIS COURT TO GIVE A SPECIAL INSTRUCTION AND
17 PROBABLY WOULD HAVE WRITTEN THAT INSTRUCTION. THAT'S
18 WHAT I TAKE YOUR ARGUMENT TO BE, AT THIS POINT.

19 HOWEVER, GIVEN WHAT YOU'RE ARGUING TO THIS
20 COURT, THE COURT CANNOT GRANT YOUR MOTION BASED ON THAT
21 EXPECTATION AND FIND --

22 MR. FREEMAN: JUDGE, I DO JUST WANT TO NOTE,
23 FOR THE RECORD, THAT MY CLIENT HAS A CONSTITUTIONAL
24 RIGHT TO HAVE GOTTEN THE INSTRUCTION -- THAT THE JURY
25 GET THE INSTRUCTIONS THE RIGHT WAY.

1 I HAVE CITED FEDERAL CASES TO THAT EFFECT. I
2 HAVE CITED FEDERAL CASES TO THAT EFFECT, ALSO THE
3 MICHIGAN STATE CONSTITUTION WHICH SPECIALLY CONFERS A
4 RIGHT, AN INDIVIDUAL RIGHT OF SELF-DEFENSE IN THE
5 CONTEXT OF FIREARMS.

6 THE COURT: RIGHT.

7 MR. FREEMAN: SO IT'S MORE THAN, HEY, THERE
8 ARE NO CASES HERE IN MICHIGAN. THERE IS FEDERAL CASES.

9 THE COURT: ALL RIGHT.

10 BASED ON THE TRANSCRIPT --

11 MR. FREEMAN: AND THE MICHIGAN CONSTITUTION.

12 THE COURT: BASED ON THE TRANSCRIPT OF THE
13 EVIDENCE PRESENTED IN THIS CASE, AND THE INSTRUCTIONS
14 THAT WERE GIVEN, I CANNOT FIND THAT ANYTHING THAT YOU
15 HAVE STATED ON THE RECORD OR IN THE MOTION WOULD
16 SUPPORT A NEW TRIAL ON THIS ISSUE.

17 ARE THERE ANY OTHER ISSUES?

18 MR. FREEMAN: THERE ARE, YOUR HONOR.

19 THERE WAS TESTIMONY ELICITED BY THE
20 PROSECUTOR FROM THE WIFE, I THINK IT WAS MRS. WATSON IS
21 HER NAME, THE WIFE OF THE NEIGHBOR, THAT ENDED UP IN
22 THE DISPUTE WITH MY CLIENT. SHE TESTIFIED THAT MY
23 CLIENT'S WIFE CAME OVER AND HAD A CONVERSATION
24 BASICALLY REGARDING REMOVING ITEMS FROM THE HOUSE, AND
25 I AM REALLY PARAPHRASING HERE. I'M NOT READING FROM MY

1 MOTION. MY MOTION IS A LITTLE BIT MORE PRECISE, AS TO
2 WHAT EXACTLY IS IN THE RECORD.

3 THE GIST OF IT IS THAT THE IMPRESSION WAS
4 CREATED IN FRONT OF THE JURY THAT THERE WAS SOME SORT
5 OF MARITAL DISCORD BETWEEN MY CLIENT AND HIS WIFE.
6 THERE IS ALSO A QUESTION THAT WAS ASKED OF MY CLIENT;
7 SOMETHING TO THE EFFECT, ARE YOU AWARE THAT YOUR WIFE
8 IS AFRAID OF YOU.

9 JUDGE, THAT INTRODUCED INTO THESE PROCEEDINGS
10 A SUGGESTION THAT DOMESTIC VIOLENCE -- A SUGGESTION OF
11 MARITAL DISCORD. ALL OF THAT IS COMPLETELY IRRELEVANT,
12 AND UNDULY PREJUDICIAL TO MR. OGILVIE, AND THAT IS ONE
13 OF THE ADDITIONAL GROUNDS THAT I HAVE STATED.

14 IT ALSO CONSTITUTES A PROPENSITY FOR VIOLENCE
15 ARGUMENT, AND THAT'S ALL EXPLICITLY LAID OUT.

16 THE LAST THING THAT I AM PREPARED TO ADDRESS
17 IN GREAT LENGTH IN THE MOTION, AND IN THE OFFER OF
18 PROOF IN SUPPORT OF THE MOTION FOR NEW TRIAL, IS THE
19 INEFFECTIVE ASSISTANCE OF COUNSEL.

20 I RECOGNIZE THAT WE HAVE BEEN HERE FOR A
21 SUBSTANTIAL AMOUNT OF TIME THIS MORNING. I AM PREPARED
22 TO GO INTO AS MUCH DETAIL AS THE COURT WANTS TO HEAR ON
23 INEFFECTIVE ASSISTANCE OF COUNSEL ARGUMENT.

24 I HAVE ISSUED A SUBPOENA FOR THAT PRIOR
25 ATTORNEY. I SPOKE WITH THAT PERSON ON THE TELEPHONE

1 THIS MORNING. AT THE TIME THAT I SPOKE WITH HIM, HE
2 WAS IN THE BUILDING. I COULD VERY WELL PUT HIM ON THE
3 STAND NOW, AND ELICIT, IF THE COURT WANTS IT, SOME
4 FACTS THAT WILL BACK UP WHAT IS IN MY OFFER OF PROOF.

5 SO I AM ASKING THE COURT TO CONSIDER THE
6 INEFFECTIVE ASSISTANCE OF COUNSEL GROUNDS THAT ARE LAID
7 OUT IN THE MOTION, AS YET ANOTHER BASIS FOR A NEW
8 TRIAL.

9 THE COURT: RESPONSE.

10 MS. DODDAMANI: AS TO THE FIRST ONE REGARDING
11 DEFENDANT'S WIFE'S ACTION, JUDGE, WE ARE NOT CONCEDED
12 ERROR. THAT'S NOT ERROR. IF YOU DID FIND THAT, IT
13 WOULD STILL BE HARMLESS ERROR. THE STANDARD IS VERY
14 HIGH, TO FIND SOMETHING THAT IS RELEVANT OR IRRELEVANT
15 TO HAVE CHANGED THE TRIAL SUBSTANTIALLY, SO THAT A
16 DIFFERENT OUT COME WOULD OCCUR. THAT'S THE STANDARD.

17 ALSO FOR INEFFECTIVE ASSISTANCE, ADDRESSING
18 INEFFECTIVE ASSISTANCE, I DON'T THINK A GINTHER HEARING
19 IS WARRANTED. WE HAVE A CASE HERE, JUDGE, WHERE THE
20 OUTCOME WOULD HAVE TO BE DIFFERENT BASED ON WHAT
21 COUNSEL DID OR DIDN'T DO.

22 IN THIS CASE THE DEFENDANT GOT ON THE STAND
23 AND ADMITTED HE POINTED A GUN AT SOMEBODY. IT'S UP TO
24 THE JURY TO DECIDE WHETHER WHAT HE SAID OR DIDN'T SAY
25 CONSTITUTES A FAIR AND REASONABLE AND HONEST BELIEF

1 THAT HIS LIFE IS BEING THREATENED.

2 JUDGE, ANYTHING THAT COUNSEL LISTED AND
3 EVERYTHING THAT COUNSEL LISTED WOULDN'T HAVE CHANGED
4 THAT RESULT, AND THAT'S WHAT WE ARE LOOKING FOR IN
5 STRICKLAND.

6 IF THE COURT DECIDES TO GRANT A GINTHER
7 HEARING, I NEED TO ASK THE COURT TO DO IT FOR A
8 DIFFERENT DAY. ONE, BECAUSE WE NEED MR. KOLODZIEJSKI,
9 AND WE ALSO NEED SOMEBODY FROM APPEALS TO CONDUCT A
10 GINTHER HEARING. BUT I DON'T THINK A GINTHER HEARING
11 IS NECESSARY IN THIS CASE.

12 THE COURT: I WOULD ALLOW, IF COUNSEL WISHES,
13 TO FILE A MOTION FOR A GINTHER HEARING; SPECIFICALLY
14 FOR A HEARING. THERE IS NOT A MOTION FILED FOR THE
15 HEARING.

16 MR. FREEMAN: IT'S ACTUALLY REQUESTED. I
17 DIDN'T FILE A SEPARATE MOTION.

18 THE COURT: I WOULD ASK YOU TO FILE A
19 SEPARATE MOTION. WE NEED TO KNOW WHAT YOU ARE FILING,
20 AND THE TIMEFRAME REQUIRED, AND THAT THERE WOULD BE
21 WITNESSES OR NOT WITNESSES, THE ISSUE OF INCOMPETENCE
22 OF COUNSEL, BRINGING IT IN YOUR MOTION FOR THIS PURPOSE
23 IS NOT ENOUGH. SO ON THAT ONE, IF YOU WISH TO DO THAT
24 YOU MAY.

25 ON THE OTHER ISSUE AS FAR AS THE STRICKLAND

1 STANDARD, AND THE INFORMATION THAT YOU ARGUE OF THE
2 PROSECUTOR AND THE QUESTIONS OF THE PROSECUTOR ON THE
3 DEFENDANT'S WIFE, AND ALSO OF THE DEFENDANT, IT DOESN'T
4 MEET A STANDARD FOR A NEW TRIAL, BECAUSE IN THIS TYPE
5 OF CASE, AND THIS CASE SPECIFICALLY, THE ARGUMENT FROM
6 START TO FINISH WAS WHETHER THE DEFENDANT HAD A RIGHT
7 TO SELF-DEFENSE IN THESE PARTICULAR CIRCUMSTANCES.

8 THAT'S HOW THE DEFENDANT FRAMED THIS CASE;
9 THAT HE BOTH HAD A LICENSE TO CARRY A WEAPON AND THE
10 RIGHT IN THIS PARTICULAR CASE. BECAUSE OF THAT, ALL
11 SORTS OF INFORMATION CAME IN ABOUT THE PARTICULAR
12 CIRCUMSTANCES.

13 FOR INSTANCE, THE DEFENDANT'S STATE OF MIND,
14 HIS WIFE'S STATE OF MIND, THE STATE OF --

15 MR. FREEMAN: HIS WIFE WASN'T THERE.

16 THE COURT: SHE WAS. IT WAS ALLEGED THAT HIS
17 WIFE WAS THERE DURING A GOOD PART OF THIS, AND THAT A
18 CHILD WAS PRESENT. FOR THAT REASON --

19 MR. FREEMAN: THE WIFE TESTIFIED -- NEVER
20 TESTIFIED.

21 THE COURT: COUNSEL, PLEASE DON'T ARGUE WITH
22 THE COURT. LET ME FINISH.

23 MR. FREEMAN: I'M SORRY, JUDGE.

24 THE COURT: THE TESTIMONY ON THE RECORD IN
25 THIS CASE WAS THAT DEFENDANT WAS OUTSIDE OF HIS HOME

1 WITH A SMALL CHILD, AND THAT HIS WIFE WAS IN THE AREA
2 AND CAME OUTSIDE DURING PART OF THIS INCIDENT, AND DID
3 MAKE COMMENTS.

4 FOR THAT REASON, THE WIFE'S ACTIONS AND HER
5 STATE OF MIND WERE BROUGHT IN.

6 THE DEFENDANT, IN HIS DEFENSE, SECONDLY, WAS
7 BRINGING IN HIS WIFE AND HIS CHILD, AND THE NEED FOR
8 PROTECTION AND ALL OF THOSE ISSUES. IN THAT CONTEXT OF
9 THE EVIDENCE, IN THIS PARTICULAR CASE, CERTAINLY THE
10 TYPE OF QUESTIONING COULD NOT BE SEEN AS SOMETHING THAT
11 WOULD BE UNWARRANTED OR PREJUDICIAL ON THAT ISSUE.

12 THE COURT DENIES THE MOTION.

13 IF YOU WISH TO FILE OR SEEK A MOTION WITH A
14 HEARING REQUEST ON THE GINTHER ISSUES, THE COURT WILL
15 ALLOW FOR THAT, AND WE WILL SET A DATE FOR THAT, IF
16 THAT'S YOUR REQUEST.

17 THANK YOU.

18 MS. DODDAMANI: THANK YOU, JUDGE.

19 MR. FREEMAN: YOUR HONOR, THAT IS MY REQUEST.

20 THE COURT: IT HAS TO BE DONE IN WRITING.

21 MR. FREEMAN: ARE WE SETTING A DATE NOW?

22 THE COURT: AFTER WE HAVE THE MOTION --

23 MR. FREEMAN: CAN SET A DATE?

24 THE COURT: -- IN WRITING.

25 MR. FREEMAN: CAN WE SET A MOTION SCHEDULE,

1 WHEN I NEED TO FILE, WHEN THE PROSECUTOR NEEDS TO
2 RESPOND, JUST TO KEEP THINGS MOVING IN TIME?

3 THE COURT: DID YOU GO OVER THE PRE-SENTENCE
4 REPORT ALL READY?

5 IS THE COMPLAINANT HERE, TODAY?

6 MS. DODDAMANI: JUDGE FOR THE GINTHER
7 HEARING, WE JUST NEED TRIAL COUNSEL.

8 THAT IS ALL WE WOULD NEED.

9 THE COURT: HAVE YOU SEEN THE PRE-SENTENCE
10 REPORT?

11 THE CLERK: JUDGE, HE HASN'T REVIEWED THE
12 PRE-SENTENCE REPORT.

13 MR. FREEMAN: I'M GOING TO NEED A COUPLE
14 MINUTES.

15 THE COURT: CALL SOMETHING ELSE.

16 (BRIEF RECESS)

17 THE CLERK: WE ARE BACK ON THE RECORD ON
18 PEOPLE VERSUS ERIC OGILVIE.

19 MR. FREEMAN: JOHN FREEMAN ON BEHALF OF
20 MR. OGILVIE, WHO IS STANDING TO MY LEFT.

21 MS. DODDAMANI: SITA DODDAMANI FOR THE
22 PEOPLE.

23 THE COURT: THIS IS THE TIME AND DATE SET FOR
24 SENTENCING IN THIS MATTER.

25 HAVE YOU REVIEWED THE PRE-SENTENCE REPORT

1 WITH YOUR CLIENT AND ARE THERE ANY ADDITIONS, DELETIONS
2 OR CHANGES YOU WISH TO MAKE TO THAT REPORT?

3 MR. FREEMAN: YOUR HONOR, I HAVE HAD THE
4 OPPORTUNITY TO SPEAK WITH MY CLIENT, GO OVER THE
5 PRE-SENTENCE REPORT.

6 MY CLIENT HAS INDICATED TO ME THAT HE DOES
7 NOT WISH TO HAVE ANY ADDITIONAL TIME TO REVIEW, AND
8 THAT HE IS READY TO PROCEED TO SENTENCING.

9 IS THAT CORRECT, MR. OGILVIE?

10 DEFENDANT: YES.

11 MR. FREEMAN: WITH RESPECT TO WHAT IS
12 CONTAINED IN THE REPORT ON PAGE 3, I BELIEVE IT IS
13 INCORRECT IN STATING THAT MY CLIENT PLED GUILTY. HE
14 WAS CONVICTED, AS WE ALL KNOW, BY TRIAL.

15 THE COURT: YES. CORRECT.

16 MR. FREEMAN: SO THAT IS ONE ERROR.

17 THE SECOND ERROR, PAGE 6, THE REFERENCE TO
18 HIS WIFE CONFIRMING A SUBSTANTIAL ABUSE HISTORY. BUT
19 IN THE PRE-SENTENCE, IT SAYS HE HAS NO SUBSTANCE ABUSE
20 HISTORY, AND HE DOES NOT HAVE A SUBSTANCE ABUSE
21 HISTORY.

22 I THINK THERE MAY BE SOME SORT OF
23 UNINTENTIONAL TYPOGRAPHICAL ERROR.

24 THE COURT: ALL RIGHT.

25 ANY RESPONSE TO THAT?

1 MS. DODDAMANI: JUDGE, I MEAN IT'S THE REPORT
2 OF THE PROBATION AGENT. SO IF THE PROBATION AGENT
3 SPEAKS TO HIS WIFE, AND SHE SAID SOMETHING, THEN I
4 DON'T THINK IT'S UP TO US TO CHANGE THAT. THAT'S THE
5 PROBATION DEPARTMENT'S VIEW OF IT.

6 MR. FREEMAN: JUDGE, THAT'S A PRETTY
7 SIGNIFICANT FACTOR. AND IN MY CLIENT'S CONVERSATIONS
8 WITH ME, AND I HAVE NO REASON TO BELIEVE HE HAS GOT ANY
9 SORT OF SUBSTANCE ABUSE HISTORY, I DON'T KNOW IF THE
10 PROBATION OFFICER MADE A MISTAKE HOW THEY WROTE IT, OR
11 WHETHER THE PROBATION OFFICER ACTUALLY HAS WHAT IS
12 SAID, THAT THERE WAS A PROBLEM FROM THE WIFE. I DON'T
13 THINK ANYONE IS IN THE POSITION --

14 THE COURT: I DON'T THINK ANYBODY WHO BUT THE
15 PEOPLE WHO WERE THERE ARE, AND IN MANY CASES THE
16 PROBATION OFFICER COULD GET A HISTORY OF INFORMATION OR
17 A LACK OF ANY SUBSTANCE ABUSE HISTORY FROM A DEFENDANT,
18 AND GET SOMETHING ELSE FROM HIS WIFE.

19 AT THIS POINT, I CAN'T CORRECT IT BY ITSELF.
20 I WILL NOTE IT AS AN OBJECTION OF YOURS, AND ASK THE
21 PROBATION DEPARTMENT TO REVIEW IT. IF THEY INDICATE
22 THAT IT WAS A TYPO, CERTAINLY WE'LL RETRACT THAT.

23 ANYTHING ELSE?

24 MR. FREEMAN: I'M CURIOUS HOW I WOULD BE
25 INFORMED OF WHETHER IT'S GOING TO STAY AS WRITTEN AFTER

1 THE PROBATION TAKES A LOOK AT IT.

2 THE COURT: ALL I CAN DO IS REQUEST THAT THEY
3 TAKE A LOOK AT IT, AND NOTIFY US OF ANY CHANGES. IF
4 YOU WOULD WANT TO CONTACT THE PROBATION AGENT AND SEE
5 WHETHER THERE WERE ANY, YOU MAY DO SO.

6 MR. FREEMAN: THAT'S THE PERSON LISTED ON THE
7 FRONT PAGE AT THE BOTTOM?

8 THE COURT: I ASSUME.

9 MR. FREEMAN: OKAY. I WILL DO THAT.

10 AS WELL, YOUR HONOR, WITH RESPECT TO THE
11 RECOMMENDATION, AS IT PERTAINS TO THE TERM OF PROBATION
12 ON THE FELONIOUS ASSAULT COUNT.

13 THE COURT: YES.

14 MR. FREEMAN: AS THE COURT IS AWARE, MY
15 CLIENT STILL HAS THE RESIDENCE THAT THIS OCCURRED IN
16 FRONT OF, AND I BELIEVE IT IS CLOSER THAN FIVE HUNDRED
17 FEET FROM THE OTHER HOME. I THINK THAT THE OTHER
18 FAMILY HAS RELOCATED.

19 SO I DON'T KNOW THAT THERE IS GOING TO BE ANY
20 POTENTIAL ISSUE THERE. BUT THERE COULD BE AN ISSUE
21 ONCE HE'S RELEASED, AS FAR AS HIM BEING ABLE TO BE
22 THERE; IF THE COURT ORDERS HE CAN'T BE WITHIN FIVE
23 HUNDRED FEET OF THE NEIGHBOR.

24 THE COURT: WELL, THERE WAS A SERIOUS AND
25 ASSAULTIVE-TYPE ISSUE HERE. SO SERIOUS, IN FACT, AND

1 ON-GOING, THE ALLEGATION BY BOTH SIDES, WAS THAT THERE
2 WAS SOME PROBLEM.

3 SO I CANNOT ORDER THE COMPLAINANT TO MOVE,
4 BUT DURING THE PROBATIONARY PERIOD, I CAN ORDER THE
5 THAT THE DEFENDANT NOT BE WITHIN FIVE HUNDRED FEET OF
6 THE COMPLAINANT, AND THAT IS GOING TO BE THE ORDER OF
7 SENTENCE.

8 SO IF THE COMPLAINANT HAS MOVED AND ISN'T
9 THERE, DEFENDANT WOULD NOT BE VIOLATING HIS PROBATION
10 BY LIVING THERE. IT'S FOR HIM TO HAVE TO FIND OUT IF
11 THE COMPLAINANT IS STILL LIVING THERE. HE WOULD STILL
12 BE ON PROBATION, AND HE WOULD NEED TO LIVE SOMEWHERE
13 ELSE DURING PENDENCY OF THIS PROBATION.

14 THE CIRCUMSTANCES ARE OUT OF THE COURT'S
15 CONTROL. THE COURT IS NOT -- JUST BECAUSE HE OWNS
16 PROPERTY -- GOING TO CHANGE AN IMPORTANT REQUIREMENT
17 THAT HE NOT HAVE CONTACT WITH THE COMPLAINANT IN THIS
18 CASE DURING PROBATION, OR BE WITHIN FIVE HUNDRED FEET
19 OF HIS RESIDENCE, PLACE OF EMPLOYMENT, OR SCHOOL.

20 MR. FREEMAN: YOUR HONOR, WITH RESPECT TO --
21 I'M SORRY.

22 MAY I MOVE ON?

23 THE COURT: YES.

24 MR. FREEMAN: WITH RESPECT TO THE NUMBER OF
25 TOTAL DAYS OF JAIL CREDIT, HE HAS BEEN IN SUBSTANTIALLY

1 LONGER THAN 19 DAYS. I HAVE COUNTED IT OUT.

2 THE COURT: MY CLERK HAS STATED IT'S ACTUALLY
3 65 DAYS.

4 DEFENDANT: THERE IS ALSO TIME IN TAYLOR.

5 MR. FREEMAN: DOES THAT INCLUDE TWO DAYS FROM
6 TAYLOR?

7 THE COURT: 65 DAYS RATHER THAN 19.

8 MR. FREEMAN: I BELIEVE WITH RESPECT TO THE
9 REPORT -- I'M SORRY.

10 THERE IS ONE OTHER ISSUE. MY CLIENT
11 INDICATED TO ME IN RESPONSE TO A QUESTION, AS FAR AS
12 HOW IS HE DOING NOW MEDICALLY, EMOTIONALLY; THIS HAS
13 BEEN VERY VERY DIFFICULT FOR HIM.

14 HE HAS INDICATED TO ME THAT IT WOULD BE ALL
15 RIGHT FOR ME TO ASK OF THE COURT TO -- I'M NOT SURE HOW
16 MUCH CONTROL THE COURT HAS OVER IT, BUT IF THERE IS
17 ANYTHING THAT YOU CAN DO TO HELP FACILITATE HIM BEING
18 ABLE TO SPEAK WITH A MENTAL HEALTH PROFESSIONAL, ONLY
19 AS FREQUENTLY AS ON AN AS-NEEDED BASIS, AND IN
20 PARTICULAR SOME GRIEF COUNSELLING. BECAUSE IT'S BEEN
21 INDICATED TO HIM THAT'S WHAT HE IS GOING THROUGH. I
22 KNOW THAT HE WOULD VERY MUCH APPRECIATE THAT.

23 THE COURT: WE'LL MARK THE FILE MEDICAL, AND
24 ASK THEM TO ADDRESS THOSE ISSUES, ASK THE DEPARTMENT OF
25 CORRECTIONS TO HAVE COUNSELLING.

1 ANYTHING ELSE?

2 MR. FREEMAN: NOT WITH RESPECT TO THE REPORT.

3 I AM PREPARED TO SPEAK ON MY CLIENT'S BEHALF
4 AND HE MAY WANT TO ADDRESS THE COURT.

5 THE COURT: PROCEED, PLEASE.

6 MR. FREEMAN: YOUR HONOR, FOR MY CLIENT, THIS
7 HAS BEEN VERY, VERY DIFFICULT FOR HIM AND FOR HIS
8 FAMILY. I SEE WHAT THE RECOMMENDATIONS ARE.

9 I KNOW THAT THE COURT'S HANDS ARE TIED WITH
10 RESPECT TO THE FELONY FIREARM. BUT I AM GOING TO ASK
11 YOU TO GO THROUGH WITH THE RECOMMENDATION OF THE
12 PROBATION ON THE FELONIOUS ASSAULT.

13 MY CLIENT HAS TWO YOUNG CHILDREN. FOR HIM TO
14 SPEND ADDITIONAL TIME ABOVE AND BEYOND WHAT HE IS GOING
15 TO HAVE TO SPEND PURSUANT TO THE STATUTE FOR FELONY
16 FIREARM, I THINK WOULD BE DISPROPORTIONATE TO THE
17 OVERALL CONDUCT HERE.

18 I AM NOT MINIMIZING THE CONDUCT HERE. I DO
19 RECOGNIZE BASED ON THE JURY'S VERDICT THAT THIS IS A
20 SERIOUS SITUATION.

21 NOT WITHSTANDING ALL LEGAL ARGUMENTS AND SOME
22 OF THE FACTUAL ARGUMENTS THAT HAVE BEEN MADE UP TO THIS
23 POINT, I DO RECOGNIZE THAT THE JURY HAS SPOKEN; THAT IT
24 IS A SERIOUS SITUATION.

25 MY CLIENT IS NOT A BAD PERSON. MY CLIENT

1 MADE A MISTAKE. THAT'S NOT HOW THE JURY SAW IT. I
2 THINK THIS IS AMPLE PUNISHMENT FOR THE MISTAKE HE MADE.

3 I DON'T THINK ANY MORE TIME THAN THAT IS
4 GOING TO HAVE ANY POSITIVE IMPACT. I DON'T THINK IT'S
5 GOING TO HELP REHABILITATE HIM. I THINK IF YOU'RE
6 GOING TO PUNISH HIM, I THINK TWO YEARS IS FRANKLY
7 ENOUGH PUNISHMENT.

8 THIS HAS HAD A VERY PROFOUND IMPACT ON HIM,
9 AND TWO YEARS IS GOING TO SERVE THE PURPOSES OF
10 SENTENCING.

11 THE COURT: ANYTHING ON BEHALF OF THE PEOPLE?

12 MS. DODDAMANI: JUDGE, WE LEAVE IT TO YOUR
13 DISCRETION ON THE FELONIOUS ASSAULT CHARGE. HIS
14 GUIDELINES, TO MY UNDERSTANDING, ARE ZERO TO SIX, AND
15 WE LEAVE THAT TO YOUR DISCRETION.

16 WE ARE ASKING YOU TO FOLLOW THAT WITH THE
17 FELONY FIREARM OF TWO YEARS.

18 MR. FREEMAN: I THINK IT WAS ZERO TO THREE.

19 THE COURT: ANYTHING YOU WOULD LIKE TO SAY ON
20 YOUR OWN BEHALF BEFORE SENTENCE IS IMPOSED?

21 DEFENDANT: YES. I APPRECIATE THE COURT'S
22 TIME FOR CONSIDERING THE ARGUMENTS WE HAVE MADE.

23 I WOULD LIKE TO ASK FOR GREAT MERCY, FOR THE
24 SAKE OF MYSELF AND MY WIFE, AS WELL AS MY TWO CHILDREN.
25 ONE IS ONLY THREE, THE OTHER IS YET TO BE ONE.

1 THIS HAS BEEN TREMENDOUSLY DIFFICULT. AND I
2 WOULD LIKE TO HAVE THE COURT RECOGNIZE THAT I HAVEN'T
3 DONE ANYTHING. I DON'T HAVE ANY CRIMINAL RECORD, AT
4 ALL, AND THAT MY CHILDREN, AND MY WIFE ESPECIALLY,
5 NEEDS ME. I'M PRIMARY PROVIDER FOR THEM.

6 ALSO MY FAMILY LACKS MY EMOTIONAL SUPPORT, AS
7 WELL AS MY FINANCIAL SUPPORT, AS WELL IN RAISING THE
8 CHILDREN AND KEEPING THE FAMILY UNITED.

9 I WOULD ASK IF THERE IS ANYTHING POSSIBLE, AT
10 ALL, THAT THE COURT MAY PROVIDE FOR ME AND MY FAMILY
11 THAT I WOULD GREATLY APPRECIATE IT, AND SO WOULD MY
12 FAMILY.

13 I RECOGNIZE THE SERIOUSNESS OF THIS
14 SITUATION, AND I JUST SIMPLY ASK FOR GREAT MERCY AND
15 UNDERSTANDING FOR THE WHOLE MATTER, AS WELL AS FOR MY
16 FAMILY, AND MYSELF.

17 I'M SORRY. I'M SORT OF AT A LOSS FOR WORDS
18 BECAUSE IT IS SUCH A TRAUMATIC EVENT. IT'S JUST -- YOU
19 KNOW, I WISH I COULD SAY MORE. I WISH IN SOME CASES I
20 COULD GO BACK IN TIME. BUT IT'S A TREMENDOUS IMPACT.

21 AGAIN, I'M ASKING FOR ANYTHING POSSIBLE. I
22 TRIED TO BE THE BEST CITIZEN I COULD ALL THROUGH MY
23 ENTIRE LIFE, AND NOW FOR A FACT, MY WIFE AND CHILDREN
24 ARE SUFFERING AS WELL AS ME, AND SO AGAIN, I THANK YOU
25 FOR YOUR CONSIDERATION AND PLEASE ASK FOR MERCY.

1 MR. FREEMAN: JUDGE, I'M SORRY TO INTERRUPT.

2 ONE LAST THING I SHOULD HAVE NOTED.

3 MR. OGILVIE'S BROTHER IS IN THE AUDIENCE. HE STILL HAS
4 SUBSTANTIAL FAMILY SUPPORT. I DID EXCHANGE MESSAGES
5 WITH HIS WIFE. SHE WAS UNABLE TO BE HERE TODAY,
6 BECAUSE THE CHILDREN HAVE THE CHICKEN POX AND I THINK
7 OTHERWISE SHE INTENDED TO BE HERE AS A SHOW OF SUPPORT.

8 I UNDERSTAND THAT THEY HAVE BEEN REGULARLY
9 SPEAKING, AND COMMUNICATING WITH ONE ANOTHER ON THE
10 TELEPHONE, AND ALSO BY LETTER.

11 THE COURT: ALL RIGHT.

12 MR. FREEMAN: THE COURT CAN SEE MY CLIENT IS
13 EMOTIONAL ABOUT THIS.

14 THE COURT: WELL, WE UNDERSTAND THAT HE IS,
15 AND THAT HE WOULD BE. AND I DON'T KNOW BY RULING THE
16 WAY THE LAW DICTATES, DEFENSE COUNSEL OR THE DEFENDANT
17 SEE THE COURT AS UNFEELING TOWARDS HIS POSITION. THAT
18 ABSOLUTELY IS NOT TRUE.

19 THIS COURT IS NOT, FOR A SECOND, CONSIDERING
20 OR WOULD CONSIDER ADDITIONAL TIME THAN THE TWO YEARS IN
21 PRISON. NO MATTER WHAT HAD BEEN SAID.

22 IN DEALING WITH THIS CASE FROM THE BEGINNING,
23 MR. OGILVIE, YOU ARE OBVIOUSLY AN INTELLIGENT MAN, BUT
24 THERE ARE SOME THINGS STANDING IN THE WAY OF SEEING THE
25 REALITY OF YOUR SITUATION FROM THE BEGINNING; IN THAT

1 THE COURT WAS PRESENTING AND MAKING A RECORD OF
2 ALTERNATIVES THAT YOU COULD HAVE HAD.

3 I DON'T KNOW IF IT IS ARROGANCE, BRAVADO, A
4 SLANTED POINT OF VIEW, OR WHAT STOOD IN THE WAY OF YOUR
5 HAVING THE DEMEANOR AND THOUGHTFULNESS THAT YOU HAVE
6 TODAY BEFORE YOUR TRIAL WHEN YOU WERE MAKING ALL THOSE
7 DECISIONS.

8 I SAW COUNSEL, PREVIOUS COUNSEL MAKE AN
9 ATTEMPT TO LISTEN TO THE COURT, AND MAKE AN ATTEMPT TO
10 HAVE THIS DEFENDANT LOOK AT HIS OPTIONS, AND MAKE HIS
11 OWN DECISION. UNFORTUNATELY, THE DECISION HE MADE PUT
12 HIM IN A POSITION WHERE THIS COURT HAS NO ABILITY TO DO
13 ANYTHING ABOUT THE FELONY FIREARM CONVICTION.

14 I MADE A POINT OF THAT BEFORE THE TRIAL. I
15 DON'T KNOW IF YOU THOUGHT YOU HAD LEEWAY ON THE FELONY
16 FIREARM IN THIS PARTICULAR CASE. YOU DON'T KNOW THIS
17 BECAUSE YOU'RE NOT HERE EVERYDAY. BUT WE HAVE MANY,
18 MANY CASES OF VERY DANGEROUS PEOPLE WHO HAVE BRANDISHED
19 WEAPONS AND POINTED WEAPONS MANY TIMES.

20 I SEE YOUR BACKGROUND, OR A LACK OF CRIMINAL
21 HISTORY. BUT THE LAW REQUIRES ON FELONY FIREARM,
22 BECAUSE OF THE DANGEROUSNESS OF THE GUNS IN OUR
23 COMMUNITY, A TWO YEAR MANDATORY STATUTORY SENTENCE. I
24 HAVE NO LEEWAY, AND NO CONTROL OVER THAT.

25 ON THE OTHER HAND, I BELIEVE YOU SHOULD HAVE

1 ALMOST A FIVE YEAR PROBATIONARY SENTENCE, BECAUSE I
2 DON'T KNOW IF THE ATTITUDES YOU HAVE TODAY WILL
3 CONTINUE WHEN YOU ARE RELEASED, OR WHETHER YOU WILL
4 HAVE THE ON-GOING PROBLEMS THAT WE HAVE FEAR OF BEING
5 OUT THERE IN THE COMMUNITY, OF ANXIETY, OF CONCERN FOR
6 YOUR FAMILY, MOOD PROBLEMS AND MENTAL HEALTH PROBLEMS.
7 BUT NOT EVERYONE DOES WHAT YOU DID. YOU WILL HAVE TO
8 FIND ANOTHER WAY.

9 ALTHOUGH IT DOESN'T SEEM LIKE IN A SHORT TIME
10 IN TERMS OF YOUR OWN PERSONAL LIFE, COMPARED TO THE
11 TIME OTHER PEOPLE SERVE WHO COME BEFORE THIS COURT,
12 YOU'LL HAVE TO MAKE AN ADJUSTMENT TO LIFE IN THIS WORLD
13 IN A DIFFERENT WAY, OR YOU WILL BE BACK, AND WHEN YOU
14 ARE RELEASED, YOU WILL NOT HAVE A PERMIT FOR CARRYING A
15 CONCEALED WEAPON. SO I WOULD SUGGEST THAT THE
16 TREATMENT AND ADJUSTMENTS BE MADE FROM TODAY ON, IN
17 ORDER TO ADDRESS THESE ISSUES.

18 IT IS THE SENTENCE OF THIS COURT THAT YOU
19 SERVE THREE YEARS PROBATION ON THE CHARGE OF ASSAULT
20 WITH A DANGEROUS WEAPON, FELONIOUS ASSAULT, AND TWO
21 YEARS MANDATORY STATUTORY TWO YEARS ON THE CHARGE OF
22 FELONY FIREARM, AND THAT YOU GET 65 DAYS CREDIT ON THAT
23 FELONY FIREARM.

24 NOW, ON THE PROBATIONARY TIME, DURING THE
25 TIME AFTER YOU ARE RELEASED, THE PROBATION TERMS ARE

1 THAT YOU NOT HAVE VERY WRITTEN, ELECTRONIC OR PHYSICAL
2 CONTACT WITH ERIC WATSON, OR ANYONE IN HIS FAMILY, AND
3 THAT YOU NOT BE WITHIN FIVE HUNDRED FEET OF THEIR
4 RESIDENCE, SCHOOL OR PLACE OF EMPLOYMENT.

5 YOU MUST HAVE A COMPLETE MENTAL HEALTH
6 ASSESSMENT, AND COMPLETE SUBSTANCE ABUSE ASSESSMENT.

7 YOU MUST FOLLOW ANY AND ALL TREATMENT AS
8 ORDERED BY YOUR FIELD AGENT, BUT AT LEAST COMPLETE
9 ANGER MANAGEMENT, AND COMPLETE A PARENTING CLASS.

10 YOU MUST PAY \$68 STATE COURT COSTS.

11 YOU MUST PAY CRIME VICTIM'S ASSESSMENT OF
12 \$60, COURT COSTS OF \$600, STATE MINIMUM COSTS OF \$136,
13 AND SUPERVISION FEE OF \$120.

14 THE COURT IS GOING TO GIVE YOU A FORM AT THIS
15 TIME. IF WISH TO APPEAL THIS SENTENCE, YOU MAY APPLY
16 TO DO SO WITHIN 42 DAYS OF TODAY'S SENTENCE DATE, AND
17 YOU MAY REQUEST AND OBTAIN COURT APPOINTED COUNSEL ON
18 APPEAL.

19 AGAIN, I DO WANT TO EMPHASIZE WE DON'T SEE
20 PEOPLE WITH THAT KIND OF RECORD USUALLY SERVE THIS
21 TIME, IN MANY CASES, NOT JUST YOUR OWN; AND HOPEFULLY
22 YOU CAN KEEP THAT IN MIND.

23 MR. FREEMAN: MR. OGILVIE HAS SIGNED THE
24 ADVICE OF APPELLATE RIGHTS FORM. I'M PROVIDING THAT
25 BACK TO THE COURT.

1 WE HAVE ALSO RECEIVED THE ORDER OF PROBATION.
2 I'M GOING TO ASK HIM TO TAKE A LOOK AT THAT, SIGN IT.
3 I WILL MAKE SURE THAT YOUR STAFF GETS IT BACK. HE MAY
4 WANT TO READ IT.

5 THE CLERK: I NEED IT RIGHT NOW.

6 MR. FREEMAN: JUDGE, THE LAST THING,
7 MR. OGILVIE IS ASKING ME IN LIGHT OF THE COURT'S
8 SENTENCE, IF YOU WOULD CONSIDER AN APPEAL BOND ON THE
9 FELONY FIREARM COUNT.

10 IT IS QUITE POSSIBLE GIVEN THE ISSUES THAT
11 HAVE BEEN RAISED, AND THAT I BELIEVE ARE GOING TO BE
12 LITIGATED FURTHER, THAT THAT WILL BE A RATHER LENGTHY
13 PROCESS.

14 IT'S QUITE POSSIBLE HE WILL END UP SERVING
15 ALL OF THE TIME BEFORE HIS APPEAL IS EXHAUSTED, AND I
16 THINK THAT THAT MITIGATES IN FAVOR OF GRANTING AN
17 APPEAL BOND.

18 IN ADDITION, YOUR HONOR, IT'S MY
19 UNDERSTANDING THROUGH SPEAKING WITH HIM, THAT THERE ARE
20 SOME MATERIALS THAT HE WOULD LIKE TO BE ABLE TO ACCESS
21 THAT HE ALONE HAS ACCESS TO; THINGS HAVING TO DO WITH
22 HIS COMPUTER THAT I REFERENCED IN CONNECTION WITH THE
23 INEFFECTIVE ASSISTANCE PORTION OF COUNSEL'S MOTION,
24 VIDEO PORTIONS THAT HE HAS. IT SHOWS A DIFFERENT SIDE
25 OF THE COMPLAINANT IN THIS CASE THAN WAS EVER BROUGHT

1 FORWARD.

2 IN ADDITION, YOUR HONOR, I'M NOT SURE IF HE
3 WANTS TO ADDRESS THE COURT WITH RESPECT TO BOND,
4 EITHER. HE ASK ME IF IT WOULD BE OKAY TO COMMENT UPON
5 THE COURT'S COMMENTS.

6 I DISCOURAGED HIM FROM DOING THAT. THIS IS
7 HIS DECISION. I DON'T KNOW WHAT HE WANTS TO DO.

8 THE COURT: IF HE WISHES TO SAY SOMETHING, HE
9 MAY.

10 DEFENDANT: I'LL FOLLOW MY COUNSEL'S ADVICE.

11 THE COURT: WELL, THERE CERTAINLY IS NOTHING
12 ON THIS RECORD THAT WOULD CAUSE THIS COURT TO BELIEVE
13 THAT THE BOND WOULD BE WARRANTED. BECAUSE AS I STATED,
14 IN MY VIEW OF COUNSEL'S -- PREVIOUS COUNSEL'S CONDUCT
15 ON THIS CASE, WHICH APPEARS TO BE THE ONLY ISSUE LEFT
16 IS THE GINTHER HEARING ISSUE; COUNSEL PREPARED FOR THIS
17 CASE. WE WERE HERE SEVERAL TIMES IN COURT, IN BOTH
18 PRETRIALS AS WELL AS IN TRIAL TO DEAL WITH HIS CLIENT,
19 AND TALK TO HIS CLIENT ABOUT THE REALISTIC OPTIONS IN
20 PRESENTING THE CASE TO THE JURY.

21 I WILL KEEP MY MIND OPEN TO SPECIFIC ISSUES,
22 LEGAL AND FACTUAL, BUT GENERALLY IT WAS A DILIGENT
23 EFFORT ON HIS PART.

24 AT THIS POINT, I DO NOT BELIEVE THAT THE
25 ISSUE OF THE BOND SHOULD BE SUCH THAT THE COURT SHOULD

1 ALLOW A BOND PENDING THE RESOLUTION OF THAT ISSUE AND
2 WILL NOT.

3 MR. FREEMAN: WE ASK THEN FOR A BRIEFING
4 SCHEDULE. HOW DOES THAT WORK?

5 I HAVE BEEN INSTRUCTED TO FILE IT WITH THE
6 CLERK, AND THAT'S WHAT I'LL DO.

7 I'M PROVIDING A COPY OF THE ORDER OF
8 PROBATION TO MY CLIENT.

9 DOES HE NEED TO SIGN THAT?

10 THE CLERK: HE WILL GET A COPY.

11 MR. FREEMAN: THANK YOU, JUDGE.

12 (HEARING CONCLUDED)

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1 R E P O R T E R ' S C E R T I F I C A T E

2

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4 STATE OF MICHIGAN)
) - SS

5 COUNTY OF WAYNE)

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7

8 I, M. ARLEN DREGER, CSR-2509, OFFICIAL COURT REPORTER IN AND
9 FOR THE THIRD JUDICIAL CIRCUIT COURT, FOR THE COUNTY OF
10 WAYNE, STATE OF MICHIGAN, DO HEREBY CERTIFY THE FOREGOING
11 TRANSCRIPT WAS REDUCED TO TYPEWRITTEN FORM BY MEANS OF
12 COMPUTER-ASSISTED TRANSCRIPTION AND COMPRISE A TRUE AND
13 ACCURATE TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE
14 ABOVE-ENTITLED MATTER.

15

16



M. ARLEN DREGER, CSR-2509
OFFICIAL COURT REPORTER

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18

19

20 DATED: 6-15-10

21 TRANSCRIPTS THAT DO NOT REFLECT A SIGNATURE IN BLUE INK MAY
22 BE AN UNAUTHORIZED COPY.

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25